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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,843	10/23/2001	Pramathesh Desai	ITW7510.006	3020
33647	7590	10/22/2003	EXAMINER	
ZIOLKOWSKI PATENT SOLUTIONS GROUP, LLC (ITW)			DEJESUS, LYDIA M	
14135 NORTH CEDARBURG ROAD			ART UNIT	
MEQUON, WI 53097			PAPER NUMBER	

2859

DATE MAILED: 10/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/682,843

Applicant(s)

DESAI ET AL.

Examiner

Lydia M. De Jesús

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-21 and 28-30 is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6-9,22-26 and 31 is/are rejected.
- 7) ☒ Claim(s) 2,5 and 27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 6 and 30 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 6 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: the relationship between the collet and the connector. This relationship is essential for the operation of the claimed assembly and should be set forth in the claim language in order to provide a clear description of the claimed assembly.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3-4, 7-9, 22-26 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang in view of OMEGAMARKER® Temperature Test Kit [hereinafter OMEGAMARKER®].

Wang shows a dual crayon holder assembly comprising: a first crayon [30], a second crayon [30] and a connector [10] physically connecting the first and second crayons in a single assembly such that each crayon is independently operable i.e., only one crayon is used at a time. Wang also teaches holding in said assembly two crayons of different color (see column 2, lines 66-67). The holder assembly further comprises a resistance mechanism [20 +40 +11 +12] attached to the connector limiting rotational movement of the crayons about an axis, said resistance mechanism including a plurality of flanges [23]. Said crayons are separately engaged in a corresponding cavity [231] of the resistance mechanism.

The connector comprises first element [10 connected to 50 as shown in Figure 1] and a second element/remaining end piece [50] shown in Figure 1, each having a marking end and a union end. It is considered that the union end of the first element [10] is configured to slidably secure into the union end of the second element/end piece [50] such that said union ends thread together to attach the first element to the second element. As shown in Figure 1, said connector prevents contact between said first and second crayons and allows said first element and second elements to be independently operable.

OMEGAMARKER® discloses a kit of temperature indicator sticks in the form of crayons of different colors and each temperature indicator stick melts at a predetermined temperature. OMEGAMARKER® also shows the use a holders for each crayon.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the holder assembly of Wang for two different indicator sticks in the OMEGAMARKER® kit, each of a different melting temperature and color, as suggested by Wang, in order to provide an indicator assembly for marking two commonly used thresholds.

With respect to claims 22-26: It is considered that the method steps recited in said claim will be performed during the normal process of making the dual temperature indicator stick of the combination of Wang and the OMEGAMARKER® kit.

***Response to Arguments***

6. Applicant's arguments, see Paper No. 8, filed 8/12, 2003, with respect to; the limitations in claims 2, 5, 10, 28 and 29 regarding the engagement of an indicator sticks by a collet; the amendments to claim 16 distinguishing the claim from the assembly disclosed by Kliewer; and the limitations regarding the particular shape of the stick recited in claim 27 have been fully considered and are persuasive. The rejections of claims 2, 5, 10-21 and 27-30 have been withdrawn.

7. Applicant's arguments filed August 12, 2002 with respect to the limitation "independently operable" recited in claims 1 and 22 have been fully considered but they are not persuasive. As discussed above, since the assembly shown by Wang allows the use of one crayon at a time, it is considered that in the assembly of the combination of Wang and OMEGAMARKER®, the indicators sticks are independently operable.

***Allowable Subject Matter***

8. Claims 10-21 and 28-30 are allowed.

9. Claims 2, 5, and 27 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Claims 6 and 30 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lydia M. De Jesús whose telephone number is (703) 306-5982. The examiner can normally be reached on 7:30 to 4:00 p.m., Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (703) 308-3875. The fax phone numbers for

Art Unit: 2859

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (703) 308-3875. The fax phone number for the organization where this application or proceeding is assigned are (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1782.

LDJ  
October 20, 2003



Diego F.F. Gutierrez  
Supervisory Patent Examiner  
Technology Center 2800